

often is done, presented the utility with its take-it-or-leave-it pole attachment agreement. The operator tried to negotiate no fewer than 20 provisions of the agreement including adhesive requirements that the cable operator:

- secure from its non-video telecommunications customers execute a "poison pill" customer release in which the cable operator's non-video customers were required to acknowledge that the cable operator's service were insecure and unreliable;
- inform the utility of the nature of its attachments and services—*i.e.*, whether the operator was providing traditional cable television service or non-video telecommunications services, well in advance of the passage of the federal Telecommunications Act of 1996 and the existence of any future utility right to collect a higher rate for telecommunications attachments;
- provide unfettered utility access to the cable operator's financial books and records;
- disclaim the jurisdiction of this Commission;
- release the utility from any liability for interruption of the operator's service even if it were caused by the utility's negligence, recklessness, or willful misconduct.

Despite the operator's repeated entreaties to the utility to modify these and other provisions of the agreement, the utility steadfastly refused to modify its position. The cable operator eventually was forced to seek this Commission's assistance to adjudicate a dispute between the cable operator and the utility, including provisions that the operator had sought to negotiate the year before.¹¹³

¹¹³ See *Marcus Cable Associates, L.P. v. Texas Utils Elec. Co.*, PA No. 96-002 (filed July 24, 1996). Attached are certain exhibits to the complaint filed in that action setting forth the facts concerning the cable operator's attempted negotiation.

There have been other examples of utilities' using the power of their incumbency to force attaching parties into adhesive contract terms that extend the outer boundaries of reasonableness. By letter order dated January 17, 1997, this Commission considered "hypothetical" language in a pole attachment agreement which sought to deprive the attaching party of any remedy outside those of the agreement, and to force the attaching party to renounce the jurisdiction of this Commission or any other tribunal with jurisdiction over the rates, term and conditions of attachment.¹¹⁴ There, the Commission ruled that this "hypothetical" clause was "unreasonable *per se*, and a provision adopted as a result of such unreasonable demand would be unenforceable as a matter of law."¹¹⁵

Not surprisingly, this language was no hypothetical, but was part of the standard boilerplate contractual language that one electric utility is currently circulating to attaching parties throughout its states of operation.¹¹⁶ To make matters worse, this utility continued to present this

¹¹⁴ See Letter from Meredith J. Jones, Chief, Cable Services Bureau, to Danny E. Adams, Esq., at 1 (Jan. 17, 1997).

¹¹⁵ *Id.* at 3.

¹¹⁶ The new Entergy agreement being circulated to cable operators states:

Licensee acknowledges and agrees that Licensor makes its facilities available pursuant to and in consideration of this Agreement only. By execution of this Agreement by its duly authorized representative, Licensee accepts that the relationship of the parties will be governed exclusively by this Agreement and Licensee waives any and all jurisdiction of federal, state or local regulatory authorities over the terms and conditions of this Agreement, access to Licensor's facilities, or any other matter respecting attachments to Licensor's facilities, including without limitation the fees, charges or rent due hereunder, for a period of two years from the effective date of this Agreement. In the event that Licensee seeks relief before any federal, state, or local court or authority regarding any such matter, or seeks judicial relief from or alteration of any term or condition of this Agreement in whole or in part on the basis of any alleged jurisdiction of federal, state, or local regulatory authority within two years of the effective date of this Agreement, this Agreement shall immediately terminate and Licensee agrees that it shall promptly remove all its attachments from Licensor's facilities pursuant to this Agreement.

language to cable operators and others *after* the Commission ruled that it was unlawful. As long as utility pole owners believe this kind of conduct to fall within the definition of negotiation, then ultimate "agreement" may only be possible by resorting to the adjudicative process before this and other *fora*. The negotiation of terms certainly is the preferred course. But a pole attachment agreement that is truly the product of good faith negotiation is the exception, not the rule. Therefore, it is absolutely critical for the continued proliferation of facilities-based competition and innovative and cost-effective service offerings that the Commission remain the forum for pole adjudication.

The utility pole owners well know that were the Commission to attenuate its absolutely vital adjudicative role, or to modify existing procedural rules allowing pole attachment cases to become drawn-out, discovery-laden proceedings (potentially requiring evidentiary hearings), it effectively would deprive facilities-based competitors of a fast, cost-effective forum for the adjudication of pole disputes. That is why the utilities are pushing, on so many different fronts, for precisely this result. Such a result would destroy the mechanisms for informal resolution of rate and other disputes, most often accomplished without invocation of formal Commission processes, and would undermine the very regulatory certainty and stability that is allowing facilities-based competition to proliferate both in the states where the FCC regulates pole attachment matters, and in many of those states which themselves have certified to regulate such matters.

Ex. 18 at 23.

VII. CONCLUSION

We respectfully urge the Commission to adopt any modifications to the pole attachment rules and pole attachment formula in a manner consistent with these Comments.

Respectfully submitted,

National Cable Television Association

Cable Telecommunications Association

Texas Cable & Telecommunications Association

Cable Television Association of Georgia

South Carolina Cable Television Association

**Cable Television Association of Maryland, Delaware and the
District of Columbia**

Mississippi Cable Telecommunications Association

Mid-America Cable Telecommunications Association

Kansas Cable Telecommunications Association

Jones Intercable, Inc.

Charter Communications

Greater Media, Inc.

Prime Cable

Rifkin & Associates

TCA Cable TV, Inc.

The Helicon Corporation

By: 

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Their Attorneys

June 27, 1997

INDEX TO ATTACHMENTS

Exhibits

1. *Consumers Power Co., et al.*, Mich. Pub. Serv. Comm'n Case Nos. U-10741; U-10816; U-10831 Order (issued Feb. 11, 1997) and Order Denying Rehearing (issued Apr. 24, 1997).
2. *In the Matter of Certain Pole Attachment Issues*, New York Pub. Serv. Comm'n Case No. 95-C-0341, Op. No. 97-10 (issued and effective June 17, 1997).
3. Study Demonstrating Weighted Average of Pole Heights for Niagara Mohawk Power Co. (NY); Detroit Edison Co. (MI) and Consumers Power Co. (MI).
4. Detroit Edison Co. (MI) Maximum Pole Rate Calculations.
5. Ameritech Michigan Maximum Pole Rate Calculations.
6. Appendices of Pole Electric Utility Pole Attachment Agreements (Duke Power Co. (NC) and Detroit Edison Co. (MI) Showing Placement of Streetlights in Neutral Zone.
7. Pole Height Survey (Waco, TX and Temple, TX).
8. Study Demonstrating Percentages of Utility Pole Inventories Comprised of 30-Foot or Shorter Poles (Niagara Mohawk (NY); New York Telephone (NY); Detroit Edison Co. (MI); and Consumers Power Co. (MI)).
9. New York Telephone Data Response Showing Uninstalled Cost of Poles By Height (NYPSC Case. No. 95-C-0341 Response ATT-NYT-2).
10. New York Telephone Data Response Showing Installed Cost of Poles By Height (NYPSC Case. No. 95-C-0341 Response ATT-NYT-1).
11. Hypothetical Calculation of Maximum Oklahoma Pole Attachment Rate For Southwestern Bell Telephone Utilizing Proposed FCC Adjusted Formula.
12. Sample Pages from 1986 Form M Annual Report for C&P Telephone Co. of Maryland.

Exhibits (cont'd)

13. Sample Administrative Carrying Charge Calculation of Bell Atlantic Maryland.
14. Sample Georgia Power Maintenance Carrying Charge Calculation.
15. Advertisement of Varieties of Multi-Port Innerduct.
16. Excerpt From Bell System Construction Practices Section 628-200-215, Issue 1, February 1981.
17. Letter from J. D. Thomas to Jack P. Hilliard Regarding Unreasonable Pole Attachment Terms and Conditions (Oct. 26, 1995).
18. Excerpt of Electric Utility Pole Attachment Agreement Mandating Waiver Of Attaching Party Federal Rights.

DECLARATIONS

Declaration of Patricia D. Kravtin

Declaration of John Pietri

Declaration of Nicholas Theroux

Declaration of Donald Steven Williams

Declaration of John Eiseman

EXHIBIT 1

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of)
CONSUMERS POWER COMPANY for)
 authority to modify tariffs governing) **Case No. U-10741**
 attachments to poles.)

In the matter of the application of)
THE DETROIT EDISON COMPANY for)
 authority to modify tariffs governing) **Case No. U-10816**
 attachments to poles.)

In the matter of the proceeding, on the)
Commission's own motion, to examine setting)
just and reasonable rates for attachments to) Case No. U-10831
utility poles, ducts, and conduits, pursuant to)
MCL 460.6g; MSA 22.13(6g).)

At the April 24, 1997 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. John G. Strand, Chairman
Hon. John C. Shea, Commissioner
Hon. David A. Svanda, Commissioner

ORDER DENYING REHEARING

On February 11, 1997, the Commission issued an order setting a pole attachment rate of \$3.74 per pole per year for utilities subject to MCL 460.6g; MSA 22.13(6g). On March 13,

1997, Consumers Energy Company¹ (Consumers), The Detroit Edison Company (Detroit Edison), the Michigan Electric Cooperative Association, Edison Sault Electric Company, the Michigan Electric and Gas Association, and Indiana Michigan Power Company (joint petitioners) and Wisconsin Public Service Corporation filed petitions for rehearing. The Michigan Cable Telecommunications Association (MCTA) and the Educational Telecommunications Networks Committee Concerned About Costs filed answers.

Rule 403 of the Commission's Rules of Practice and Procedure, 1992 AACSR, R 460.17403, provides that a petition for rehearing may be based on claims of error, newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences resulting from compliance with the order. A petition for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the Commission's decision. Unless a party can show the decision to be incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision, the Commission will not grant a rehearing.

The Commission finds that the petitions for rehearing fail to meet the standard set forth in Rule 403. Except as noted below, the petitioners' arguments reiterate their previous positions or express disagreement with the Commission's decision. Therefore, the Commission will not summarize those arguments or address them in this order.

However, two points require clarification. First, the petitions imply that the only beneficiary from the rate decrease is the cable television industry. However, the rates are available to any attaching party, including educational institutions seeking to use pole attachments for distance learning applications.

¹Effective March 11, 1997, Consumers Power Company became Consumers Energy Company.

Second, the joint petitioners state that the calculation of the weighted average rate should have used the actual numbers of pole attachments provided by Consumers and Detroit Edison, which were documented in discovery responses. The joint petitioners do not provide a citation to the record for this data. Discovery responses are not part of the record, which is the basis for fact finding under the Administrative Procedures Act of 1969. MCL 24.276; MSA 3.560(176), MCL 24.285; MSA 3.560(185).

On April 2, 1997, TCI of Greater Michigan, Inc., (TCI) filed a late petition for leave to intervene. On April 10, 1997, the Commission Staff filed an objection to TCI's petition.

TCI has an interest in these cases as one of the parties represented by the MCTA. It represents that its participation will not delay the proceedings or cause hardship to the parties. Because these cases have already been decided in a final order, there would be little, if any, effect on the existing parties if TCI is granted leave to intervene at this time. Therefore, the Commission finds that it should grant TCI's petition.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; MSA 22.151 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; MSA 22.1 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; MSA 22.13(1) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACCS, R 460.17101 et seq.
- b. The petitions for rehearing should be denied.
- c. TCI's late petition for leave to intervene should be granted.

THEREFORE, IT IS ORDERED that:

A. The petitions for rehearing are denied.

B. The late petition for leave to intervene filed by TCI of Greater Michigan, Inc., is granted.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand

Chairman

(S E A L)

/s/ John C. Shea

Commissioner, dissenting in a separate opinion.

/s/ David A. Svanda

Commissioner

By its action of April 24, 1997.

/s/ Dorothy Wideman

Its Executive Secretary

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of)
CONSUMERS POWER COMPANY for) Case No. U-10741
authority to modify tariffs)
governing attachments to poles.)
_____)

In the matter of the application of)
THE DETROIT EDISON COMPANY for) Case No. U-10816
authority to modify tariffs)
governing attachments to poles.)
_____)

In the matter of the proceeding, on)
the Commission's own motion, to)
examine setting just and reasonable) Case No. U-10831
rates for attachments to utility)
poles, ducts, and conduits,)
pursuant to MCL 460.6g.)
_____)

DISSENTING OPINION OF COMMISSIONER JOHN C. SHEA

(Submitted on April 24, 1997 concerning order issued on same date.)

For the reasons stated in my dissenting opinion dated February 11, 1997 in this docket, I dissent.



John C. Shea, Commissioner

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)	
CONSUMERS POWER COMPANY for)	
authority to modify tariffs governing)	Case No. U-10741
attachments to poles.)	
_____)	
)	
In the matter of the application of)	
THE DETROIT EDISON COMPANY for)	
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In the matter of the proceeding, on the)	
Commission's own motion, to examine setting)	
just and reasonable rates for attachments to)	Case No. U-10831
utility poles, ducts, and conduits, pursuant to)	
MCL 460.6g; MSA 22.13(6g).)	
_____)	

At the February 11, 1997 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. John G. Strand, Chairman
Hon. John C. Shea, Commissioner
Hon. David A. Svanda, Commissioner

OPINION AND ORDER

I.

HISTORY OF PROCEEDINGS

On November 30, 1994, Consumers Power Company (Consumers) filed an application,
docketed as Case No. U-10741, to increase its Rate PA, which addresses pole attachments and

conduit use. According to the application, Consumers' pole attachment rate would become \$10.40 per pole per year, and its conduit rate would become \$6.15 per foot per year. Its current rates of \$4.95 per pole (which is the statewide rate) and \$4.59 per conduit foot were established in a settlement agreement approved by the Commission on March 11, 1986 in Case No. U-8161.¹

On February 13, 1995, Administrative Law Judge Robert L. Shankland (ALJ) conducted a prehearing conference in Case No. U-10741 and granted leave to intervene to the Michigan Electric and Gas Association (MEGA), Indiana Michigan Power Company (I&M), the Michigan Electric Cooperative Association (MECA), Ameritech Michigan, and the Michigan Cable Telecommunications Association (MCTA).² The Commission Staff (Staff) also participated. Martin W. Clift, Jr., made a statement on behalf of City Signal, Inc., d/b/a US Signal, (US Signal) pursuant to 1992 AACS, R 460.17207.

On March 22, 1995, The Detroit Edison Company (Detroit Edison) filed a similar application, docketed as Case No. U-10816. The application requested authority to increase Detroit Edison's pole attachment rate to \$33.61 per pole per year and its conduit rate to \$4.19 per foot per year. Detroit Edison's current charges are the statewide rate of \$4.95 per pole and a conduit

¹The statewide rate of \$4.95 per pole was negotiated among providers and customers of regulated pole attachment service in Michigan and implemented in a series of settlement agreements in 1986.

²The MCTA objected to the other intervenors' participation and filed an application for leave to appeal the ALJ's ruling. On March 29, 1995, the Commission granted the MCTA's application for leave to appeal, but upheld the ALJ's ruling.

rate of \$3.82 per foot, which were established in a settlement agreement that was approved in the January 22, 1986 order in Case No. U-8152.³

On March 23, 1995, the Staff filed a motion to consolidate Cases Nos. U-10741 and U-10816 together with a generic proceeding to consider a uniform approach to setting pole attachment rates. On March 29, 1995, the Commission issued an order granting the motion and commencing Case No. U-10831 as a generic proceeding encompassing all electric utilities and telecommunication providers that had not been previously exempted from filing a tariff for pole attachments. The order stated that the purpose of the consolidated proceedings was to determine whether the current statewide pole rate should be revised and whether to adopt a generic methodology.

In response to the MCTA's request for clarification, the Commission issued another order on May 18, 1995, in which it stated that it did not intend to hold separate rate cases for each affected utility, that the purpose of the consolidated proceedings was to determine which of the proposed methodologies is the most appropriate, and that each utility would file new tariffs after the proceedings concluded.

On May 4, 1995, the ALJ conducted a prehearing conference in the consolidated cases. In addition to confirming the intervenor status of the parties participating in Case No. U-10741, the ALJ granted leave to intervene to GTE North Incorporated, the Telephone Association of Michigan (TAM), Wisconsin Electric Power Company (Wisconsin Electric), Wisconsin Public Service Corporation (WPS Corp), Upper Peninsula Power Company, the Educational Telecommunications Networks Committee Concerned about Costs (EDUNETS), and Edison

³Detroit Edison's conduit rate is set pursuant to a formula that permits annual changes.

Sault Electric Company (Edison Sault). On June 20, 1995, the ALJ granted leave to intervene to AT&T Communications of Michigan, Inc. The ALJ later granted leave to intervene to US Signal, although it subsequently withdrew.

On November 30, 1995, 1995 PA 216 (Act 216) was signed into law, thereby amending the Michigan Telecommunications Act, 1991 PA 179, MCL 484.2101 et seq.; MSA 22.1469(101) et seq. Act 216 added Section 361, MCL 484.2361; MSA 22.1469(361), which governs the rates, terms, and conditions of attachments offered by a telecommunication provider to another provider or operator of cable television services (cable TV). As a result, the telecommunication providers ceased to participate actively in these cases.

The ALJ conducted evidentiary hearings on January 8 to 11, 1996. Consumers, Detroit Edison, MEGA, I&M, MECA/Edison Sault, Wisconsin Electric/WPS Corp,⁴ TAM, the MCTA, EDUNETS, and the Staff filed briefs. Consumers, Detroit Edison, MEGA, Ameritech Michigan, the MCTA, and EDUNETS filed reply briefs.

On March 29, 1996, the ALJ issued a Proposal for Decision (PFD) recommending that the Staff's position be adopted with modifications. Consumers, Detroit Edison, Wisconsin Electric/WPS Corp, the MCTA, EDUNETS, and the Staff filed exceptions. Consumers, Detroit Edison, MEGA, MECA/Edison Sault, the MCTA, EDUNETS, and the Staff filed replies to exceptions.

⁴Combined parties coordinated their participation in these cases.

II.

SUMMARY OF THE RECORD

Introduction

Except for a few variations, most of the proposed methodologies for pole attachment rates follow a three-step process. The first step is to place an average value on the utility's investment in poles. This value accounts for the costs of the material for the pole and related facilities and the labor used to install the pole.

Second, an annual carrying charge is developed to recover ongoing costs related to poles, including the utility's cost of capital, depreciation, taxes, operation and maintenance (O&M) expense, and insurance. The carrying charge is usually expressed as a percentage of the pole value.

Third, the costs are allocated among the utility and others using the pole to attach their lines and facilities. This requires assumptions to be made regarding the extent to which each user benefits from the pole. In a typical arrangement involving a telephone company and an attaching party⁵ using an electric pole, the telephone lines occupy the lower part of the pole space that is available for attachments (usable space),⁶ the lines of the attaching party occupy the space immediately above that, and the electric utility occupies the remaining space. Most approaches estimate a length (in feet) for the pole space that is occupied by each user. The

⁵In this order, the term "attaching party" is used as defined in MCL 460.6g(1)(a); MSA 22.13(6g)(1)(a): "any person . . . other than a utility or a municipality, which seeks to construct attachments [to a utility pole, duct, or conduit] upon, along, under, or across public ways or private rights of way."

⁶Usable space refers to the pole space above the minimum level for ground clearance that can be used for attaching lines. See MCL 484.2361(1)(b); MSA 22.1469(361)(1)(b), 47 USC 224(d)(2).

remainder of the pole is non-usable space, which includes pole length buried below ground, the above-ground portion used to provide line clearance, and, under some approaches, the neutral zone required to provide separation space between electrical facilities and communications lines for safety purposes. The percentage of an attaching party's footage of pole space is used to allocate the costs to be recovered through a pole attachment rate.

Thus, the pole attachment rate is equal to the pole investment value multiplied by the carrying charge percentage multiplied by the allocation factor.

Those parties addressing conduit rates took approaches that were similar in concept to their pole rate methodologies.

Positions of the Parties

a. Consumers

Consumers presented two alternative methodologies for calculating a pole attachment rate. The first approach, known as the system average price, uses current and projected embedded costs for the period 1995-1997. The second methodology, the current costs approach, is based on replacement costs determined as of 1994. Tr. 307-309.

Consumers also assumed that all poles used for attachments were either 35 or 40 feet in length.⁷ One effect of this assumption was to eliminate the additional investment and costs attributable to longer poles, apparently because the additional height was not viewed as benefitting non-electrical uses. Tr. 319-321.

Applying the system average price approach, Consumers witness William C. Bigcraft determined that the average value of poles in service was \$128.11 for each 35 foot pole and

⁷Utility poles are generally acquired in five foot increments of length.

\$225.63 for each 40 foot pole. Exhibit A-3, p. 1. This included the investment in the pole itself, the labor to install the pole, and related overheads. Under the current costs approach, he assigned values of \$614.43 to 35 foot poles and \$722.27 to 40 foot poles. Exhibit A-4, p. 1.

Consumers witness Robert J. Northrup calculated a carrying charge of 20.36% to recover pole depreciation, return on investment, taxes, insurance, and O&M expense. Exhibit A-1.

By applying the carrying charge developed by Mr. Northrup to the average pole values, Mr. Bigcraft calculated annual carrying costs of \$25.80 under the system average price approach and \$105.56 under the current costs approach. Exhibits A-3, p. 1, and A-4, p. 1. He made this calculation using a composite pole, which is based on the assumption that $\frac{2}{3}$ of Consumers' poles used by attaching parties are 35 feet in length and the remaining $\frac{1}{3}$ are 40 feet.

Mr. Bigcraft developed allocation factors by assuming that each composite pole had $29\frac{1}{3}$ feet of space that provided a common benefit to all users (6 feet of underground length + 20 feet for line clearance + 40 inches of neutral zone). In calculating the allocation factor, he assumed that each user had an equal share of cost responsibility for $29\frac{1}{3}$ feet of pole length. Thus, the annual carrying costs for a 35 foot pole used by Consumers and one attaching party were allocated by half to each, and the costs for a 40 foot pole used by Consumers and two others were allocated in equal thirds to each. Using this allocation, Mr. Bigcraft developed an average pole attachment charge of \$9.63 under the system average price approach and \$39.41 under the current costs approach. *Id.*

Mr. Bigcraft developed a conduit rate by applying a 20.30% carrying charge⁸ to the embedded cost of conduit per foot. Because Consumers has only one customer (other than

⁸This carrying charge percentage for conduits was developed by Mr. Northrup. Exhibit A-1, p. 2.

itself) for conduit use, Mr. Bigcraft assumed two users for each conduit. His proposed charge was \$6.70 per conduit foot. Exhibit A-5, p. 1.

b. Detroit Edison

Detroit Edison characterized its proposed methodology as "reproduction cost depreciated." As the basis for calculating the reproduction cost of pole investment, Detroit Edison witness Karl E. Roehrig used the original investment in 35, 40, 45, and 50 foot poles installed from 1952 to 1994. He escalated those amounts for each of the years 1952-1994 by applying the Handy-Whitman Index of Public Utility Costs. He also added the estimated current cost of installing an overhead grounding system (which Consumers omitted). He reduced this measure of reproduction costs for depreciation by applying the ratio of the poles' average remaining life (21 years) to their average service life (30 years). The resulting pole investment value was \$433.56 per pole. Exhibit A-8.

Detroit Edison's carrying charge of 12.628% covered its authorized return on investment, taxes, working capital, and general plant overhead. Exhibit A-10. However, Detroit Edison did not include depreciation and O&M expense in the carrying charge. Instead, Mr. Roehrig separately calculated annual cost allowances of \$34.19 per pole for depreciation and \$21.54 per pole for maintenance. See Exhibits A-8 and S-19.

Detroit Edison witness Glenn R. Spence developed allocation factors. For 35, 40, 45, and 50 foot poles, Mr. Spence allocated the space directly used for attachment of wires and facilities, exclusive of neutral zones, to each of the three assumed users (electric, telephone, and attaching party). For the attaching party, this meant one to two feet, depending on the pole length. All neutral zones (40 inches), ground clearance zones (18.7 to 24.7 feet), and below

ground zones (6 to 7 feet) were allocated in equal shares of $\frac{1}{3}$. Mr. Spence derived an allocation factor of 29.15% as the weighted average of the allocation factors for the four pole lengths. Exhibit A-13. By applying this allocation factor to the carrying costs and expense allowances developed by Mr. Roehrig, Detroit Edison calculated its proposed pole attachment rate of \$32.21. Exhibit A-8.

For its conduit rate, Detroit Edison applied its reproduction cost depreciated approach to compute a rate of \$3.36 per foot. Exhibit A-9.

c. Staff

James R. Padgett, Supervisor of the Engineering Section of the Commission's Electric Division, presented the Staff's reproduction cost methodology for pole attachments. Unlike Detroit Edison, the Staff's approach did not make allowance for accumulated depreciation and excluded overhead grounding systems. Mr. Padgett proposed to allocate costs on the basis of usable space, assigning one foot to each attaching party. Unlike Detroit Edison, his approach treats the $3\frac{1}{3}$ foot neutral zone as non-usable space and also assumes that poles of 40 feet or more in length accommodate two attaching parties. Tr. 473-475. Using these assumptions to modify Detroit Edison's Exhibit A-13, Mr. Padgett computed an allocation factor of 10.12%. Exhibit S-20. Applying the Staff approach to Detroit Edison's cost data, he calculated a rate of \$11.13 per pole. Exhibit S-19.

Mr. Padgett testified that the potential for competition between electric utilities and attaching parties in offering communication services should be addressed on the basis of the principle of comparability. By this, he meant that the utility should impute to itself the same

charges that apply to attaching parties for its own use of an electric pole to offer a competing communication service.

William J. Celio, Director of the Commission's Communications Division, recommended that a uniform statewide pole attachment rate should be implemented; i.e., one rate would continue to be charged by all utilities in Michigan, as is the case now. He stated that Mr. Padgett's proposed rate methodology should be applied to Detroit Edison and Consumers and that the statewide rate should be a weighted average of the rates computed for each of them.⁹

d. Wisconsin Electric

Wisconsin Electric witness John A. Zaganczyk proposed an allocation methodology that assumed a 40 foot pole shared by three users. He allocated one foot of direct space to the attaching party as well as $\frac{1}{3}$ of the neutral zone, ground clearance space, and underground space, resulting in an allocation factor of 25.28% for the attaching party. Exhibit I-21. In their joint brief, Wisconsin Electric/WPS Corp supported Mr. Zaganczyk's approach. They also supported a reproduction cost approach to pole valuation.

e. EDUNETS

EDUNETS is an association representing Michigan intermediate school districts and community colleges that are seeking to use fiber optic systems for distance learning and other educational purposes. Its witnesses contended that both education and utility rights of way are public necessities, that pole attachment rates impose a financial hardship on school budgets, and

⁹Although Mr. Celio initially recommended that Ameritech Michigan's poles and costs be included in the calculation of a statewide rate, Act 216 changed that recommendation.

that public educational institutions should be exempt from paying those rates. As an alternative, EDUNETS witnesses recommended that rates be set at the utility's incremental cost of providing pole attachments.

f. MCTA

David N. Townsend, an expert in telecommunications policy, presented the MCTA's primary recommendation, which was that the rate methodology for pole attachments and conduit use should be based upon the incremental costs directly caused by attaching parties. He estimated that incremental cost pricing would produce a pole attachment rate for cable TV operators of \$0.50 per pole annually. Tr. 666.

As an alternative, Mr. Townsend recommended the formula used by the Federal Communications Commission (FCC). According to him, the FCC formula requires that a utility's gross investment in poles be reduced by its depreciation reserve and accumulated taxes. This net amount is reduced by an additional 15% to account for pole cross-arms that do not benefit cable TV operators, and the difference is divided by the utility's total poles in service to compute net investment per bare pole. Next, he said, a carrying charge is computed to cover maintenance expense, depreciation, administrative expense, taxes, and return on capital.

Mr. Townsend testified that the FCC allocates costs on the basis of usable space. He said that this approach assigns one foot of usable space to the attaching party and calculates the factor as the ratio of one foot to total usable space. He further stated that the FCC presumes a pole's total usable space to be 13.5 feet, although there is evidence that usable space in Michigan is

15.4 feet.¹⁰ Under the FCC presumption, the attaching party's allocation factor is $1 \div 13.5$, or 7.41%. If the MCTA's Michigan-specific estimate of usable feet is used, the allocation factor becomes $1 \div 15.4$, or 6.49%.

Applying the FCC formula, Mr. Townsend computed pole attachment rates of \$3.37 and \$3.85 for Consumers and \$4.24 and \$4.84 for Detroit Edison, depending on which allocation factor is used. Exhibits I-48, I-49, I-51, and I-52.

In its briefs, the MCTA advocated a similar formula for conduit rates. Its proposed formula assumed that a cable TV operator would use one duct per conduit and that each conduit had nine ducts, so that the cable TV operator's allocation factor would be $1 \div 9$, or 11.11%.

PFD

The ALJ adopted the Staff's recommendation that a uniform statewide rate be established for utility pole attachments. He reasoned that a uniform rate is efficient from an administrative standpoint and provides certainty for those who are affected by competition in the market for communication services. He also adopted the Staff's proposal for computing a uniform rate as a weighted average of rates calculated for Consumers and Detroit Edison, the two utilities with most of the electric poles in Michigan. He excluded the poles of Ameritech Michigan and other telecommunication providers on the ground that Act 216 prescribes a separate methodology for them. PFD, pp. 35-36, 40-41.

The ALJ rejected EDUNETS' position that public educational institutions should be exempt from pole attachment rates. He stated that expenses for public education are covered by

¹⁰MCTA witness Dennis C. Gilliland used a statistical analysis to estimate that an average utility pole with cable TV attachments in Michigan has 15.4 feet of usable space.

budgeted funds, that pole attachment rates are a small part of overall budgets, that the requested exemption would amount to a subsidy by electric ratepayers, and that EDUNETS did not cite any legal or regulatory precedent for its position. Acknowledging EDUNETS' contention that utility poles use public rights of way, he said that pole attachment rates cover only the utilities' expenditures to install and maintain the poles, not the underlying property rights. *Id.*, pp. 33-34, 38-40.

The ALJ recommended that the Commission adopt a modified form of the Staff's methodology for computing pole attachment rates. He agreed with the Staff that a reproduction cost approach would be more appropriate than embedded costs as a means of compensating utility ratepayers, who otherwise pay for all of the pole-related costs through their electric rates. He added that, as the ultimate consumers of an essential service, those ratepayers should not be required to subsidize attaching parties' use of electric poles. He also found that an incremental cost approach would foreclose electric ratepayers from recouping any of the benefit that the poles provide to attaching parties and would put upward pressure on base electric rates. He said that the MCTA's fears of competitive abuse by electric utilities would be resolved by the Staff's proposal to require imputation of pole attachment rates to the utilities' competitive ventures in communication services. *Id.*, pp. 31-35, 42-48.

For purposes of assigning a value to the poles, the ALJ rejected Detroit Edison's position that its pole investment should include overhead grounding systems. He stated that the electric utility was the primary beneficiary of the grounding systems, which protect against sudden electrical surges associated with lightning or accidents. He said that the evidence did not show that cable TV operators and other attaching parties receive a comparable benefit. *Id.*, pp. 30-31.